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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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09/558,232

04/26/2000

David M. Manyak

900/00310

9717

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07/24/2009

Caliper Life Sciences, Inc.  
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EXAMINER

LY, CHEYNE D

ART UNIT

PAPER NUMBER

2168

MAIL DATE

DELIVERY MODE

07/24/2009

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

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*Ex parte:* DAVID M. MANYAK, RENEE A. ZEPPETELLO, HAO CHEN,  
ARTHUR D. WEISSMAN, and GARRY L. LANG

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Appeal No. 2009-004667  
Application No. 09/558,232  
Technology Center 2100

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Mailed: July 24, 2009

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Before DALE SHAW *Chief Appeals Administrator*

ORDER REMANDING TO EXAMINER

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This application was electronically received by the Board of Patent Appeals and Interferences (BPAI) on December 15, 2008. A docketing notice was mailed to Appellants on February 24, 2009. A further review of the application has revealed that it is not ready for decision consideration by a BPAI judicial panel. Accordingly, the application is herewith being remanded to the Examiner to address the following matter.

### APPEAL BRIEF, APPEALED CLAIMS

Appellants have not appealed all rejected claims. Specifically, a review of the Grounds of Rejection on the record finds that rejections are outstanding for the following pending claims: 1-3, 10, 14-23, 27, 28, 33-43, 59-64, 67, 68, 70-105, 107, 108, 110, 120-129, 132, 139, and 140-142, 144, and 145. The rejected claims that have not been appealed and/or argued for appeal are claims 59-64, 67, 68, 70-105, 107, 108, 110, 120-129, 132, 139, 140, 141, 144, and 145.

### DISCUSSION

The Board of Appeals and Interferences (Board), in *Ex parte Ghuman*, <http://www.uspto.gov/web/offices/dcom/bpai/prec/rm081175.pdf> (BPAI May 14, 2008) (precedential), held that in appeals where rejected claims are expressly withdrawn, or are implicitly withdrawn by not presenting arguments in support of patentability, the Board will remand (or return) the application to the Examiner with instructions to cancel the expressly or implicitly withdrawn claims. *See also Manual of Patent Examining Procedure* (MPEP) § 1215.03 (8<sup>th</sup> ed. Rev. 7, Sept 2008).

**CONCLUSION**

Accordingly, it is

ORDERED that this application be remanded to the Examiner to:

- 1) to enter a paper canceling claims 59-64, 67, 68, 70-105, 107, 108, 110, 120-129, 132, 139, 140, 141, 144, and 145;
- 2) upon entry of the paper, to return the application to the Board for the consideration of appealed claims; and
- 3) for such further action as may be appropriate.

If there are any questions pertaining to this Order, please contact the Board of Patent Appeals and Interferences at 571-272-9797.

DMS/PEB

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